IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 13TH MARCH 2007 / 22ND PHALGUNA 1928

WA.No. 12 of 2006(B)

AGAINST THE JUDGEMENT IN WPC.15891/2005
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APPELLANT: 6TH RESPONDENT IN W.P(C):

P.A. THANKACHAN,
UPPER PRIMARY SCHOOL ASSISTANT,
ST. JOSEPHS H.S.S., PULLIKUNNU, ALAPPUZHA.

BY ADV. SRI.KKM.SHERIF
SRI.P.M.KUNJIMOIDEENKUTTY
SRI.LAL K.JOSEPH
SRI.A.A.ZIYAD RAHMAN
SMT.SHEENA SAMUEL
SRI.RAKESH DAWNY KOKKATTU

RESPONDENTS: 1-5 RESPONDENT IN W.P.(C) & PETITIONER IN W.P(C):
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1. STATE OF KERALA,
REP. BY THE SECRETARY TO GOVERNMENT,
GENERAL EDUCATION DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DIRECTOR OF PUBLIC INSTRUCTION,
THIRUVANANTHAPURAM.

3. THE DISTRICT EDUCATIONAL OFFICER,
KUTTANAD AT RAMANKARY, ALAPPUZHA.

4. THE ASSISTANT EDUCATIONAL OFFICER,
MANKOMPU, ALAPPUZHA DISTRICT.

5. THE CORPORATE MANAGER,
CORPORATE EDUCATIONAL AGENCY OF C.M.I. SCHOOLS,
PROVINCE OF ST. JOSEPHS, THIRUVANANTHAPURAM.

6. RAJU XAVIER,
HEAD MASTER, S.H.U.P. SCHOOL,
CHAMPAKULAM, ALAPPUZHA.

BY GOVERNMENT PLEADER SHRI. SANDESH RAJA FOR R1 TO R4
SRI.M.S.RADHAKRISHNAN NAIR
SRI.JOSEPH KODINTHARA FOR R5
SRI.MITHUN MARKOSE
SRI.ELVIN PETER P.J. FOR R6
SRI.S.RAMESH
SRI.P.N.SANTHOSH

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 13/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.Raman & Antony Dominic, JJ.

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W.A.No.12 of 2006

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Dated this the 13th day of March, 2007.

JUDGMENT

Raman,J.

Appellant was the sixth respondent in the Writ Petition, W.P.(C) No.15891 of 2005. The said Writ Petition was filed by the 6th respondent herein. The appellant is the senior-most U.P.S.A. In the S.H.U.P. School, Champakulam. The sixth respondent herein though junior to him, was appointed as the Headmaster of the School by the management from 1.4.2003, the date on which the vacancy to the post of Headmaster arose. However, the appointment of the sixth respondent herein was not approved by the Department and hence, aggrieved thereby, the sixth respondent came to this Court by filing the Original Petition, inter alia, seeking to quash the said appointment. Though the said appointment was approved by Ext.P8 order, subsequently, on an appeal filed by the appellant herein, the approval was cancelled by Ext.P9 and confirmed by Exts.P10 and P11 by the Higher Authorities. The Writ Petition was filed challenging Exts.P9, P10 and P11 seeking to quash the same.

2. A learned single Judge of this Court allowed the Original Petition as prayed for, against which the present Writ Appeal is filed. While the Writ Appeal was pending, the issue regarding the right of the minority institution in the matter of appointment of Headmaster of their choice, in the light of the earlier decision of this Court was doubted and the matter was referred to a Full Bench. The Full Bench, by its judgment dated 16.8.2006, held thus:

> "The protection under Article 30(1) of the Constitution is to the minority community and for the minority community. The Manager may supersede the members of other communities and also members of the minority community, who are found unsuitable for promotion to the post of Headmaster. But there may be Teachers, who are, in every respect, qualified and suitable to head a minority educational institution. The management may select the best among them. The selection procedure should be fair, reasonable and transparent. The eligible members of the minority community may not have a feeling that they have been superseded without any valid grounds. So, all minority educational institutions, which propose to select the best person to the post of Headmaster/Principal of a School or College, as the case may be, ignoring seniority in the feeder category or ignoring available Teachers, should frame and publish regulations or bye-laws, containing a transparent procedure, governing such selection. The publication can be made in the Notice Board of the

> educational institution concerned and a copy of it should be available in School/College library for reference. When superseding a senior qualified member of the minority community the reasons thereof should be clear from the records. The question as framed in the beginning of this order is thus answered accordingly."

Turning to the present case, W.A.No.12 of 2006, it was observed as follows: "Writ Appeal No.12 of 2006 is mainly rested on the bench decision of this Court in **Varkey** v. **State of Kerala** (2005 (2) KLT 468) wherein it has been held that the minority management has no freedom to appoint a teacher of its choice as Headmaster/Principal. We have already held that the decision does not reflect the correct position in law. Yet another contention taken is with regard to the qualification of the writ petitioner - 6th respondent in the writ appeal. That is a matter to be considered by the Bench concerned."

3. What is thus left to be decided in the present appeal is as to whether the sixth respondent in the appeal do possess the required qualifications for appointment to the post of Headmaster.

4. As per Rule 45 of Chapter XIV A of Kerala Education Rules (hereinafter referred to as "K.E.R."), "when the post of Headmaster of complete U.P. School is vacant or when an incomplete U.P. School becomes a complete U.P. School, the post shall be filled up from among the qualified teachers on the staff of the School or Schools

under the Educational Agency. If there is a Graduate teacher with B.Ed. or other equivalent qualification and who has got at least five years experience in teaching after acquisition of B.Ed. Degree he may be appointed as Headmaster provided he has got service equal to half of the period of service of the senior most under graduate teacher." This is subject to Rule 44 of Chapter XIV A of K.E.R. As per Rule 44, the appointment of Headmasters shall ordinarily be according to seniority from the seniority list prepared and maintained under clauses (a) and (b), as the case may be, of Rule 34. The Manager will appoint the Headmaster subject to the Rules laid down in the matter. A Teacher if he is aggrieved by such appointment will have the right of appeal to the Department. The provision contained in Rule 44 of Chapter XIV A of K.E.R. is not relevant for the purpose of this case.

5. The contention of the appellant is that though the sixth respondent in the appeal is a graduate, he does not possess the qualifications as prescribed under Rule 45 of Chapter XIV A of K.E.R. so as to supersede a senior-most Teacher, who is otherwise entitled to be appointed as Headmaster and hence, the sixth respondent must be held to be not qualified for the post of Headmaster. He also contended that though for appointment to the post of Headmaster in the High School, requisite period of 12 years of continuance service is required

to be possessed, in the case of U.P. School, there is no such prescription and therefore, there is lacuna in this regard.

6. As far as the first contention is concerned, we are unable to agree with the appellant's contention. As per Rule 45 of Chapter XIV of K.E.R. a graduate Teacher with B.Ed. or other equivalent qualification and having at least five years experience in teaching after B.Ed. Degree, can be appointed as Headmaster, who got service equal to half of the period of service of the senior-most Teacher. In other words, whether it may be any minority institution or any other institution, a person possessed of the superior qualification referred to in Rule 45 of Chapter XIV of K.E.R. can be appointed as Headmaster superseding the senior-most. But in the case of minority institution, it has been held by the Full Bench of this Court that they got the right of choice in the matter of appointment of Headmaster provided the incumbent appointed is qualified to hold the post. Therefore, what is to be looked into is whether the sixth respondent herein is possessed of the minimum qualification required for appointment to the post of Headmaster. The fact that the School to which the appointment has to be made belongs to a minority institution is beyond doubt and at any rate, before us, the learned counsel appearing for the appellant did not argue otherwise and the finding of the learned single Judge in this

regard is not seriously challenged in the appeal. As we have noticed, Rule 45 of Chapter XIV of K.E.R. does not prescribe any separate qualification for appointment to the post of Headmaster in the U.P. School. If a person is appointed as a Teacher in a U.P. School, who possesses the required qualification to hold the post of a Teacher, then there is no further qualification required to be appointed as a Headmaster. There is no dispute that the sixth respondent is an approved Teacher in the U.P. School in question. If so, there is no doubt that he is also fully qualified to be appointed as Headmaster of the School. The learned single Judge held in para 11 as follows:

> "Of course, it will not be justice to invoke minority rights for negativing the claims of a senior candidate belonging to the very same seniority community in a capricious manner. In the instant case the management contends they had good reasons for preferring the petitioner to the 6th respondent. According to the management, in their assessment the petitioner is more eligible for appointment as Headmaster while the interest of the institution and the community is taken into account. The facts and circumstances emerging through Ext.R5(c) will reveal that the opinion of the management that the 6th respondent is not so suitable as the petitioner is for appointment as Headmaster cannot be said to be totally irrational and unfounded. I am in agreement with the conclusions and observations of the Division Bench in

Annie Francis (supra) in this regard and it will have to be held that the management has considerable latitude in the matter of preferring the petitioner to the 6th respondent."

7. Thus, it can be seen that the management has assessed the case of the appellant as well as the sixth respondent and found that the sixth respondent is more eligible for appointment to the post of Headmaster. No materials are placed to come to a different conclusion in this appeal.

8. As per the judgment in Appeal, the fourth respondent was directed to do the needful in this matter fixing the period of six weeks from the date of receipt of a copy of the judgment. In view of the pendency of the Writ Appeal, we extend the period by six weeks to run from the date of this judgment. The Writ Appeal fails and accordingly dismissed, subject to the enlargement of time as stated above.

P.R.Raman,
Judge.

Antony Dominic
Judge.

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